

THE HONORABLE MARSHA J. PECHMAN

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

MARTHILDE BRZYCKI,

Plaintiff,

v.

HARBORVIEW MEDICAL CENTER and  
UNIVERSITY OF WASHINGTON,

Defendants.

CASE NO. 2:18-cv-01582-MJP

**PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**NOTING DATE: DECEMBER 20, 2019**

**ORAL ARGUMENT REQUESTED**

**I. INTRODUCTION AND RELIEF REQUESTED**

In June and July 2017, Defendants Harborview Medical Center (“Harborview”) and the University of Washington (collectively, “Defendants”) failed outright in their duty to accommodate Plaintiff Marthilde Brzycki’s disability as required by the Washington Law Against Discrimination, chapter 49.60 RCW. In April 2017, Ms. Brzycki, a Health Care Specialist working in Harborview’s Stroke Center, was placed on medical leave due to anxiety, panic attacks, and high blood pressure. In late June 2017, Ms. Brzycki’s health care provider released her to return to work in July on a part-time schedule. Without seeking input from Ms. Brzycki or her health care provider, Ms. Brzycki’s manager developed a schedule that required

Ms. Brzycki to see more patients during a five-hour clinic day than she saw when she worked full-time. Ms. Brzycki expressed concerns about her ability to see a full-time load of patients while on a part-time schedule and proposed an alternative. Rather than engage in the interactive process with Ms. Brzycki, her manager told her that the schedule was “not up for negotiation.” Ms. Brzycki returned to work in early July 2017 but, as she feared, was unable to see a full slate of six patients in a five-hour day. Her mental health counselor placed her back on medical leave due to her anxiety. Because there is no genuine issue of material fact regarding Defendants’ failure to accommodate her disability, Ms. Brzycki respectfully moves the Court, pursuant to Federal Rule of Civil Procedure 56, for summary judgment on her claim that Defendants failed to accommodate her disability in June and July 2017.

## II. FACTS

### A. Summary of Background Facts<sup>1</sup>

Ms. Brzycki is a Black woman who was born in Haiti and moved to New York City when she was eleven years old. Declaration of Marthilde Brzycki in Support of Plaintiff’s Motion for Partial Summary Judgment (“Brzycki Decl.”) ¶ 2. She still speaks with a strong Haitian accent. *Id.*

Ms. Brzycki began working for Harborview as a part-time per-diem registered nurse in 2011. *Id.* ¶ 3. In January 2015, after completing her master’s degree and receiving her Advanced Registered Nurse Practitioner (“ARNP”) license, she began to work as a Stroke Health Care Specialist in Harborview’s Stroke Center. *Id.* Ms. Brzycki was not provided a job description when she began to work as Stroke Health Care Specialist, but she understood her

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<sup>1</sup> Because this Motion focuses on Defendants’ failure to accommodate Ms. Brzycki’s disability in June and July 2017, Ms. Brzycki provides here only a high-level summary of the background leading up to her June 2017 request for accommodation. Ms. Brzycki will provide a more detailed discussion of the factual background of this case in her Opposition to Defendants’ Motion for Summary Judgment.

primary duties to include seeing stroke patients who had been discharged from Harborview and the University of Washington Medical Center approximately two to four weeks post-discharge for follow-up appointments in Harborview's Stroke Clinic and coordinating follow-up care for the patients until they could be seen by a stroke neurologist. *Id.* ¶ 4. This work required her to spend time preparing for her patients and writing chart notes after the patients' appointments were complete. *Id.* ¶ 5. Her patients often had complex medical issues, and because many of them were poor and did not have primary care physicians, part of her work included ensuring that they had access to adequate health care. *Id.* Because of these issues, she generally spent between 30 minutes to an hour preparing for a patient appointment and 45 minutes to an hour writing chart notes after the appointment. *Id.*

There was substantial turnover in the management of the Stroke Center during Ms. Brzycki's first two years. *Id.* ¶ 6. The first Stroke Program Manager to whom Ms. Brzycki reported, Vicki Johnson, left Harborview in or about December 2015. *Id.* An interim Stroke Program Manager, Miryah Hibbard, left Harborview in approximately May 2016. *Id.* Throughout this time, Ms. Brzycki worked with the Stroke Program Managers, the Stroke Center Directors Kyra Becker M.D. and David Tirschwell M.D., and higher-level managers such as Assistant Administrator of Patient Care Services Kathy Hare and Director of Health Care Specialists Kelly Paananen to define her job duties and responsibilities. *Id.*

In August 2016, Harborview hired Tricia Roland<sup>2</sup> as Stroke Program Manager. *Id.* ¶ 7. Ms. Roland had worked in Haiti and was married to a Haitian man. Declaration of Christie J. Fix in Support of Plaintiff's Motion for Partial Summary Judgment ("Fix Decl.") Ex. I

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<sup>2</sup> Ms. Roland has since changed her last name to O'Donohue. Fix Decl. Ex. L (O'Donohue Dep.) at 6:10-17. Because her last name was Roland at the time the events at issue in this Motion took place, and because her name appears as "Tricia Roland" in the relevant documents, this brief refers to her as "Ms. Roland."

(O'Donohue Dep.) at 22:16-23:14; 26:6-7. Shortly after Ms. Roland began working in the Stroke Center, she began to ask Ms. Brzycki to cook her Haitian food, to invite her to gatherings of Haitian people, and to speak Creole with her. Ms. Brzycki declined to do so. *Id.* ¶ 8. Ms. Roland soon began to micromanage Ms. Brzycki's work, to scrutinize her schedule and whereabouts, to interrupt her by banging on her door while she was working, and to assign Ms. Brzycki work that had traditionally been performed by the Stroke Center's Resource Nurse. *Id.* ¶ 9 When Ms. Brzycki tried to explain her job to Ms. Roland, Ms. Roland dismissed her or reacted angrily. *Id.*

Ms. Roland, working with Human Resources Consultant Nola Balch, initiated an investigation of Ms. Brzycki's time and attendance in November 2016. Fix Decl. Ex. I (O'Donohue Dep.) at 89:2-11. During this period, Ms. Brzycki reached out to Ms. Hare and Ms. Paananen to ask for help clarifying her role and responsibilities. Brzycki Decl. ¶ 10. On November 17, Ms. Roland issued to Ms. Brzycki a letter informing her that an investigatory meeting had been scheduled on December 5 regarding Ms. Brzycki's time and attendance. *Id.* ¶ 11. On November 18, Ms. Brzycki complained to Harborview management and to the University Complaint Investigation and Resolution Office ("UCIRO") that Ms. Roland's actions against her were harassing, bullying, and prejudicial against her on the basis of her national origin and race. *Id.* ¶ 12.

## **B. Facts Relevant to this Motion**

The investigatory meeting regarding Ms. Brzycki's time and attendance took place as scheduled on December 5. Brzycki Decl. ¶ 14. After the meeting, Ms. Brzycki began to feel sick. Brzycki Decl. ¶ 14. Her vision was blurry and she felt light-headed. *Id.* She took her blood pressure and found that it was much higher than normal. *Id.* On December 7, Ms. Brzycki saw

her health care provider, Elizabeth Schuringa, ARNP, who diagnosed Ms. Brzycki with work-related stress, anxiety, and panic-type disorder. Fix Decl. Ex. A (Schuringa Dep.) at 19:25-22:5; 23:8-24:10. Ms. Schuringa placed Ms. Brzycki on medical leave for four weeks to seek treatment for her anxiety and panic-type disorder. Fix Decl. Ex. B at UWMB002925. On January 3, Ms. Schuringa extended Ms. Brzycki's medical leave. Fix Decl. Ex. C.

On January 17, Ms. Schuringa released Ms. Brzycki to return to work on February 2. Fix Decl. Ex. D. She requested for Ms. Brzycki the accommodation of a "private quiet place to do her work to avoid anxiety." *Id.* Ms. Brzycki returned to work on February 2. Brzycki Decl. ¶ 15.

On February 14, after a second investigatory meeting, Harborview placed Ms. Brzycki on paid administrative leave pending the completion of the investigation initiated by Ms. Roland. *Id.* ¶ 16. The investigation resulted in a decision to issue to Ms. Brzycki a "Step C Final Counseling" and detailed performance plan. *Id.* ¶ 17; *see generally* Fix Decl. Ex. V. "Step C" is the highest level of discipline short of termination under the Collective Bargaining Agreement between Harborview and Ms. Brzycki's Union. Brzycki Decl. ¶ 17. For the first time, Harborview also provided Ms. Brzycki a job description. Fix Decl. Ex. V at UEMB00002674-78.

Ms. Brzycki's paid administrative leave ended on April 18, and she returned to work. Brzycki Decl. ¶ 18. After discussing the Step C discipline and performance plan with management, Ms. Brzycki's feelings of stress and anxiety quickly returned. *Id.* On April 26, Rachel Sternoff, ARNP, diagnosed Ms. Brzycki with anxiety, insomnia, subclinical hyperthyroidism, and elevated blood pressure. Fix Decl. Ex. E (Sternoff Dep.) at 21:6-17. She placed Ms. Brzycki back on medical leave through June 1, 2017. Fix Decl. Ex. F. In the request

1 for leave, Ms. Sternoff wrote that Ms. Brzycki was “having increased anxiety with panic  
2 attacks and elevated blood pressure associated with work. She needs 8 weeks off of work to  
3 reduce stress. The anxiety is affecting her work, sleep, blood pressure and quality of life.” *Id.* at  
4 UWMB002903. She later extended Ms. Brzycki’s medical leave to July 1, 2017. Fix Decl. Ex.  
5 G. On June 27, 2017, Ms. Sternoff released Ms. Brzycki to return to work on July 1, 2017, with  
6 a part-time schedule of 20 hours per week for two months. Fix Decl. Ex. H at UWMB002894.  
7 On the request form, she again wrote that Ms. Brzycki was “having anxiety with panic attacks  
8 and elevated blood pressure associated with work stress.” *Id.* at UWMB002983.  
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11 Harborview Leave Specialist Kim Francis received Ms. Sternoff’s request for a part-  
12 time return to work schedule for Ms. Brzycki. Fix Decl. Ex. I (Francis Dep.) at 56:17-57:1. The  
13 Leave Specialist’s role is to review incoming requests for medical leave and accommodations;  
14 to approve or deny the requests based on regulations and University policy; and to correspond  
15 with employees, health care providers, and department management as part of that process. *Id.*  
16 at 11:14-21.  
17

18 On June 28, 2017, Ms. Francis emailed Ms. Roland to ask if Ms. Roland’s department  
19 could accommodate Ms. Brzycki’s request for a reduced schedule. *Id.* at 58:10-18; Fix Decl.  
20 Ex. J at UWMB00001632. Ms. Roland replied that she was “looking at the needs of the  
21 department to see how we can make this work for everyone.” Fix Decl. Ex. J at  
22 UWMB00001631.  
23

24 On June 30, 2017, Ms. Roland emailed a 20 hour per week schedule to Ms. Brzycki,  
25 copying Ms. Francis, Ms. Balch, Dr. Tirschwell, Ms. Hare, and Ms. Paananen. Fix Decl. Ex.  
26 M. Ms. Roland did not send the schedule to Ms. Francis for review before forwarding it to Ms.  
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28

1 Brzycki. Fix Decl. Ex. I (Francis Dep.) at 59:17-60:6. She also did not discuss the proposed  
2 schedule with Ms. Brzycki before sending it to her. Brzycki Decl. ¶ 20.

3  
4 Ms. Roland's schedule provided that after Ms. Brzycki's first week back to work, a  
5 regular schedule would go into place in which Ms. Brzycki would be expected to work five  
6 hours per day, four days per week, with Thursdays off. Fix Decl. Ex. M at UWMB005121.  
7 The Tuesday schedule required Ms. Brzycki to see six patients in the Stroke Clinic during the  
8 five-hour workday. *Id.* The schedule required Ms. Brzycki to be in rounds and completing  
9 inbasket tasks on Mondays and to be in clinic all day on Tuesdays. *Id.* The schedule did not set  
10 aside time for Ms. Brzycki to prepare for her Tuesday clinic appointments.  
11

12 Before she went on medical leave, Ms. Brzycki had ordinarily scheduled five patients  
13 during a Tuesday clinic day while working full time. Brzycki Decl. ¶ 21. Ms. Brzycki also  
14 needed time prepare for each patient by reviewing his or her chart notes and to complete chart  
15 notes after the patient visit. *Id.* Because of the complexity of the patients' health status, and the  
16 frequent need to address access to care issues for patients who did not have primary health care  
17 providers, preparing for a patient visit could take between 30 minutes to an hour. *Id.* Thus, the  
18 six-patient day required Ms. Brzycki to do as much—if not more—work in a five-hour day as  
19 she would normally do in an eight-hour day. *Id.*  
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22 Ms. Brzycki responded to Ms. Roland's email later that same day. Fix Decl. Ex. N. Her  
23 response was copied to the same individuals who were copied on Ms. Roland's email attaching  
24 the part-time schedule, including Ms. Francis. *Id.* She wrote, "Unfortunately I cannot handle  
25 working part-time and seeing 6 patient [sic] on a clinic day; which is more than my usual load  
26 at this time. And based on your workflow, I will not have prep time for Tuesdays clinic." *Id.*  
27 She proposed, instead, that she be scheduled to see three to four patients on Tuesdays. *Id.*  
28

1 Ms. Roland refused to discuss Ms. Brzycki's concerns with her. *See* Fix Decl. Ex. O.  
2 Instead, in an email to Ms. Brzycki, she insisted that the schedule she developed was  
3 reasonable, and told Ms. Brzycki that the schedule was "not up for negotiation." *Id.* Her  
4 response did not address Ms. Brzycki's concerns about needing time to prepare for clinic  
5 patients. *Id.* Ms. Roland did not copy Ms. Francis, the Leave Specialist responsible for  
6 managing Ms. Brzycki's leave and accommodations requests, on her response to Ms. Brzycki.  
7  
8 *Id.*

9  
10 Ms. Francis did not have an opportunity to react to Ms. Roland's response to Ms.  
11 Brzycki because she was not copied on Ms. Roland's email. During her deposition, she  
12 testified that Ms. Roland's response to Ms. Brzycki's email was not consistent with how the  
13 University of Washington handled disability accommodations. Fix Decl. Ex. I (Francis Dep.) at  
14 62:3-18. She testified that "at any point in time, the department or the employee could re-  
15 engage in the process." *Id.* at 62:18-20. She stated that as Leave Specialist she "would have re-  
16 engaged in the disability accommodation process and seen if there were other modifications to  
17 that schedule that would have worked for both the employee and/or the department." *Id.* at  
18 62:22-63:2. She testified that that process did not happen in this case. *Id.* at 62:3-5.

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20  
21 Ms. Roland testified that she removed Ms. Francis from her response because Ms.  
22 Balch—with whom she had worked during the investigation of Ms. Brzycki's time and  
23 attendance between November 2016 and April 2017—believed "it was no longer about her  
24 accommodation" but was instead "about work performance." Fix Decl. Ex. L (O'Donohue  
25 Dep.) at 173:24-174:6. Ms. Roland testified, "Well, we had met the accommodation with the  
26  
27  
28



1 modified schedule, and going back to Mattie’s previous email, this was just more of the  
 2 pushback that was how Mattie engaged in conversations with me.” *Id.* at 174:7-12.<sup>3</sup>

3 Ms. Brzycki returned to work on July 3. On July 11, Ms. Brzycki’s concerns about Ms.  
 4 Roland’s non-negotiable schedule proved to be well-founded. All six of the patients scheduled  
 5 for Tuesday clinic appeared for their appointments that day. Brzycki Decl. ¶ 24. Ms. Brzycki  
 6 was unable to see all of the patients in the limited window available to her. *Id.* Rather than  
 7 finishing clinic at 5:00 p.m., she worked until 7:00 p.m. with no meal or rest breaks and she  
 8 was unable to complete her chart notes. *Id.* As a result, her workday far exceeded the five hours  
 9 she was scheduled to work that day. Ms. Brzycki felt anxious and sick, her blood pressure was  
 10 again high, and she felt like she was falling apart. *Id.*

13 On the morning of July 12, Ms. Brzycki, distraught after her difficult day in clinic, sent  
 14 an email to Director of Medical Centers Human Resources Jennifer Petritz in which she  
 15 complained about Ms. Roland’s non-negotiable schedule. Brzycki Decl. ¶ 25; Fix Decl. Ex. Q  
 16 at UWMB010957-58. Ms. Petritz responded that she would look into her concerns. Fix Decl.  
 17 Ex. Q at UWMB010957.

19 Later that morning, Ms. Brzycki saw her counselor, M. Reid Stell, LMHC, for a pre-  
 20 planned appointment. Brzycki Decl. ¶ 25. Mr. Stell placed Ms. Brzycki back on medical leave  
 21 due to her anxiety. Fix Decl. Ex. S.

23 On July 13, Ms. Roland sent Ms. Petritz an email regarding her “justification” for Ms.  
 24 Brzycki’s part-time schedule. Fix Decl. Ex. P. The purported “justification,” however, reveals  
 25

27  
 28 <sup>3</sup> Ms. Brzycki used the nickname “Mattie” with her coworkers.

1 that Ms. Roland was not considering Ms. Brzycki's need for an effective disability  
2 accommodation when she developed the schedule.

3 First, Ms. Roland noted "ongoing issues with Mattie working overtime due to not  
4 appropriately managing her time and going into unauthorized overtime." *Id.* However, neither  
5 Ms. Roland nor anyone else had provided Ms. Brzycki training to help her improve her ability  
6 to manage her time before setting the six-patient schedule. Brzycki Decl. ¶ 26.

8 Second, Ms. Roland noted that

9 The inpatient ARNP's . . . have been kind enough to help us out when there  
10 [sic] schedule permits. . . . They had previously agreed to see 6 patients on  
11 Friday July 7<sup>th</sup> and Tuesday July 11<sup>th</sup> (both of these days were booked with 6  
12 patients) once we heard of Mattie's return we decided it only fair to have Mattie  
13 see these patients as the inpatient ARNPs were seeing patients in stroke clinic in  
addition to their other full time work.

14 Fix Decl. Ex. P. Ms. Roland thus emphasized "fairness" to other employees in developing Ms.  
15 Brzycki's part-time schedule rather than Ms. Brzycki's need for accommodation for her  
16 disability. Notably, the inpatient ARNPs who had covered Ms. Brzycki's Stroke Clinic shifts  
17 during Ms. Brzycki's April through July leave also covered Ms. Brzycki's Stroke Clinic  
18 patients when Ms. Brzycki returned to medical leave on July 12. Brzycki Decl. ¶ 27; see also  
19 Fix Decl. Ex. U (Tirschwell Dep.) at 68:3-69:23.

21 Third, Ms. Roland attached to her email a spreadsheet showing the number of patients  
22 that were scheduled for Ms. Brzycki compared to the number of patients she actually saw on  
23 each clinic day.<sup>4</sup> Fix Decl. Ex. P at UWMB005340. Her spreadsheet showed that the average  
24 number of patients seen per day was just over three. *Id.*; see also *id.* at UWMB005327. Ms.  
25 Roland stated that she based her proposed schedule on the average number of patients who  
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28 <sup>4</sup> The Stroke Clinic typically had a high no-show rate for two- to four-week ARNP follow-up visits in 2016. Fix Decl. Ex. P at UWMB005327.

1 attended their clinic appointments, but there is no evidence that Ms. Roland considered the  
 2 effect on Ms. Brzycki if a full slate of six patients attended their appointments, as actually  
 3 occurred on July 11.  
 4

5 Fourth, Ms. Roland noted, “If Mattie attended rounds on Monday/Wednesdays and case  
 6 conference on Fridays as detailed in her schedule we felt this would give her prep time to know  
 7 the patients and any pertinent issues that arose.” Fix Decl. Ex. P at UWMB005327. Attending  
 8 rounds and case conference, however, would not have helped Ms. Brzycki during the first few  
 9 weeks after she returned return to work. Ms. Brzycki saw patients two to four weeks after they  
 10 were discharged from the hospital. Brzycki Decl. ¶ 4. Therefore, the rounds and case  
 11 conferences for the patients scheduled for clinic on July 11 would have taken place in the  
 12 weeks before Ms. Brzycki returned to work.  
 13

14 Finally, Ms. Roland wrote, “It’s also worth mentioning that at any point Mattie could  
 15 have and should have communicated with me any concerns and problem solve around her  
 16 schedule.” Fix Decl. Ex. P at UWMB005327. Ms. Brzycki, however, did communicate her  
 17 concerns about the schedule to Ms. Roland in her June 30 email, but Ms. Roland flatly refused  
 18 to discuss those concerns. *See* Fix Decl. Exs. N & O.  
 19

20 Aside from a brief period in November 2017, Ms. Brzycki never returned to full time  
 21 employment at Harborview. Brzycki Decl. ¶ 28. By late November 2017, Ms. Brzycki felt she  
 22 had no other choice but to resign in order to protect her mental health. *Id.*  
 23

## 24 **B. Procedural Background**

25 Ms. Brzycki filed her Complaint in this Court on October 29, 2018 (Dkt. # 1), and her  
 26 Amended Complaint on October 24, 2019 (Dkt. # 24). She alleges claims of discrimination on  
 27 the basis of race and national origin in violation of Title VII of the Civil Rights Act of 1964, 42  
 28

U.S.C. § 2000e, et seq. (“Title VII”) and the Washington Law Against Discrimination, chapter 49.60 RCW (“WLAD”); retaliation for making complaints of discrimination in violation of Title VII and the WLAD; and failure to accommodate her disability in violation of the WLAD. Amended Complaint (Dkt. # 24).

### III. ARGUMENT AND AUTHORITY

#### A. Summary Judgment Standard

“Summary judgment is appropriate if there is no genuine dispute of material fact viewing the evidence in the light most favorable to the nonmoving party.” *Folkens v. Wyland Worldwide, LLC*, 882 F.3d 768, 773 (9th Cir. 2018) (internal quotation marks and citation omitted); Fed. R. Civ. P. 56. The movant bears the initial burden to demonstrate the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A genuine dispute of a material fact is “one that could reasonably be resolved in favor of either party.” *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004). On a motion for summary judgment, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986).

#### B. The Court should grant Ms. Brzycki’s motion for summary judgment because Defendants failed in their duty to reasonably accommodate her disability in June and July 2017.

The Washington Law Against Discrimination (“WLAD”) requires an employer to reasonably accommodate an employee with a disability unless the accommodation would pose an undue hardship. RCW 49.60.180(2); *Pulcino v. Fed. Express Corp.*, 141 Wn.2d 629, 639, 9 P.3d 787 (2000), *overruled in part on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 228, 137 P.3d 844 (2006). To prevail on a failure to accommodate claim, the plaintiff must show that (1) she had a disability as defined by the WLAD; (2) she was qualified to perform the

1 essential functions of her job; (3) she gave the employer notice of her disability and limitations;  
 2 and (4) upon notice, the employer failed to adopt measures available to it in order to  
 3 accommodate the disability. *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 532 (2003).  
 4

5 A reasonable accommodation must allow the employee to work in the environment and  
 6 perform the essential functions of her job without substantially limiting symptoms.” *Frisino v.*  
 7 *Seattle School Dist. No. 1*, 160 Wn. App. 765, 777-78, 249 P.3d 1044 (2011) (citing *Griffith v.*  
 8 *Boise Cascade, Inc.*, 111 Wn. App. 436, 442, 45 P.3d 589 (2002)). “To accommodate, the  
 9 employer must affirmatively take steps to help the employee with a disability to continue  
 10 working at the existing position or attempt to find a position compatible with the limitations.”  
 11 *Id.* (citing *Griffith*, 111 Wn. App. at 442, 45 P.3d 589). Because the evidence in the record  
 12 shows that there is no genuine dispute of fact regarding the four elements of Ms. Brzycki’s  
 13 claim for failure to accommodate in June and July 2017, the Court should grant Ms. Brzycki’s  
 14 motion for partial summary judgment on this claim.  
 15  
 16

17 **First**, there is no genuine dispute that as of June and July 2017, Ms. Brzycki was  
 18 disabled within the meaning of the WLAD. To establish that she had a disability for purposes  
 19 of qualifying for reasonable accommodation, Ms. Brzycki’s burden is only to show that she had  
 20 “an impairment that substantially limit[ed] . . . her ability to perform the job.” *Johnson v.*  
 21 *Chevron U.S.A., Inc.*, 159 Wn. App. 18, 28, 244 P.3d 438 (2010); RCW 49.60.040(7). Here, by  
 22 June 2017, Ms. Schuringa, Ms. Sternoff, and Mr. Stell had diagnosed Ms. Brzycki with anxiety  
 23 that affected her ability to work. *See* Fix Decl. Ex. A (Schuringa Dep.) at 20:25-21:3; Fix Decl.  
 24 Ex. E (Sternoff Dep.) at 21:6-21:17; Fix Decl. Ex. R (Stell Dep.) at 92:5-11; 92:20-93:14. *See*  
 25 also Fix Decl. Exs. B, C, F, H, & S (leave documentation submitted by Ms. Brzycki’s health  
 26 care providers).  
 27  
 28

1        **Second**, there is no genuine dispute that Ms. Brzycki was qualified to perform the  
 2 essential functions of her position. Although Harborview had disciplined Ms. Brzycki in April  
 3 2017 for purported violations of Harborview policy and placed her on a performance plan,  
 4 Harborview made no determination during that process that she was not qualified to do her job.  
 5 *See generally* Fix Decl. Ex. V.

7        **Third**, there is no genuine dispute that Ms. Brzycki and her providers gave Harborview  
 8 notice of her disability and limitations. The Health Care Provider Certification form that Ms.  
 9 Sternoff submitted to Harborview on June 27, 2017 made clear that Ms. Brzycki suffered from  
 10 “anxiety, panic attacks, and elevated blood pressure associated with work stress,” that her  
 11 anxiety had “affected her work,” and that she needed the accommodation of a part-time  
 12 schedule of no more than twenty hours per week for two months. Fix Decl. Ex. H.

14        **Fourth**, the evidence in this case makes clear that Defendants failed, as a matter of law,  
 15 to meet their obligation to engage in good faith in the interactive process to identify and adopt  
 16 reasonable measures to accommodate Ms. Brzycki’s disability in June and July 2017.

18        The reasonable accommodation process “envisions an exchange between employer and  
 19 employee, which each party seeks and shares information to achieve the best match between  
 20 the employee’s capabilities and available positions.” *Frisino*, 160 Wn. App. at 779-80, 249  
 21 P.3d 1044 (citing *Goodman v. Boeing Co.*, 127 Wn.2d 401, 408-09, 899 P.2d 1265 (1995)). The  
 22 employer has a duty to determine the nature and extent of the disability after the employee has  
 23 initiated the process by notice. *Id.* at 780. This interactive process requires “a good faith  
 24 exchange of information” between the parties. *Id.* The interactive process requires  
 25 “communication and good-faith exploration of possible accommodations” between employer  
 26 and employee, and neither side can delay or obstruct the process. *Huge v. Boeing Co.*, No. C14-

857 RSM, 2015 WL 6626568, at \*9 (W.D. Wash. Oct. 30, 2015) (citing *Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1137 (9th Cir. 2001)).<sup>5</sup> “Employers should ‘meet with the employee who requests an accommodation, request information about the condition and what limitations the employee has, ask the employee what he or she specifically wants, show some sign of having considered employee’s request, and offer and discuss available alternatives when the request is too burdensome.’” *Reed v. Kindercare Learning Centers, LLC*, No. C15-5634BHS, 2016 WL 7231454, at \*6 (W.D.Wash. Dec. 14, 2016) (quoting *Barnett v. U.S. Airways, Inc.*, 228 F.3d 1105, 1115 (9th Cir. 2000), *judgment vacated on other grounds by U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002)).

Although an employer is entitled to select the mode of accommodation offered where multiple potential modes of accommodations are possible, the accommodation selected must be adequate and effective. *Frisino*, 160 Wn. App. at 779-80, 249 P.3d 1044. An employer may choose to make only one attempt at accommodation, but it risks statutory liability if that attempt is not effective and it cannot show that additional efforts are an undue burden. *Frisino*, 160 Wn. App. at 782, 249 P.3d 1044. Here, because Defendants failed outright in their duty to engage in the interactive process to identify an accommodation that would be effective for Ms. Brzycki, summary judgment for Ms. Brzycki on her claim is warranted.

There is no dispute that Ms. Roland developed the part-time schedule without consulting Ms. Brzycki to better understand her need for accommodation. After Ms. Roland sent Ms. Brzycki the schedule, Ms. Brzycki met her obligation to communicate to Ms. Roland her concerns that the accommodation would not be effective. She pointed out to Ms. Roland

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<sup>5</sup> The WLAD and the federal Americans with Disabilities Act have the same purpose; thus, Washington courts look to ADA cases for guidance in interpreting the requirements of the WLAD. *MacSuga v. Cnty. of Spokane*, 97 Wn.App. 435, 442, 983 P.2d 1167 (1999) (citing *Fahn v. Cowlitz Cnty.*, 93 Wn.2d 368, 376, 610 P.2d 857 (1980)).

1 that she ordinarily saw five patients on a full-time schedule on Tuesdays, that she feared she  
2 could not see six patients in a part-time schedule, and that the proposed schedule did not allow  
3 time for her to prepare for the Tuesday patients. Fix Decl. Ex. N. She suggested, as an  
4 alternative, that she see three to four patients on Tuesdays rather than six. *Id.* Rather than  
5 engage with Ms. Brzycki to determine whether adjustments could be made to the proposed  
6 schedule that would make the accommodation effective for her, Ms. Roland ignored Ms.  
7 Brzycki's concerns and flatly rejected her alternative proposal. Ms. Roland removed Ms.  
8 Francis, the Leave Specialist responsible for managing the accommodation process for Ms.  
9 Brzycki, from the email thread about the part-time schedule, and told Ms. Brzycki that the part-  
10 time schedule she had developed was "not up for negotiation." Fix Decl. Ex. O.

13 Ms. Roland's reasons for refusing to adjust the schedule are contrary to the "flexible,  
14 interactive process" required by the WLAD. First, Ms. Roland testified that she and Ms. Balch  
15 interpreted Ms. Brzycki's request for a lighter patient load on Tuesdays as "about work  
16 performance" rather than about her need for accommodation. Fix Decl. Ex. L (O'Donohue  
17 Dep.) at 173:6-175:2. Thus, Ms. Roland's own testimony shows that she was not thinking of  
18 the need to propose an effective accommodation for Ms. Brzycki's disability when she rejected  
19 Ms. Brzycki's concerns.  
20

21 Ms. Roland's purported justifications for the proposed schedule also demonstrate that  
22 her reasons for developing the schedule and refusing to adjust it in response to Ms. Brzycki's  
23 well-founded concerns were based on improper considerations, incorrect assumptions, and  
24 falsehoods rather than on determining an effective accommodation for Ms. Brzycki. Ms.  
25 Roland assumed a nearly 50% no-show rate for Tuesday clinics; moved the six patients who  
26 had already been scheduled to see a full-time ARNP to Ms. Brzycki's schedule; and assumed  
27  
28



1 Ms. Brzycki would always have seen the patients in rounds and case conferences prior to their  
2 follow-up visits and therefore have no need for pre-clinic patient preparations. Fix Decl. Ex. P  
3 at UWMB005327. Although Ms. Roland also referred multiple times to “ongoing” issues with  
4 Ms. Brzycki “not appropriately managing her time,” at no point in her emails to Ms. Brzycki or  
5 Ms. Petritz did Ms. Roland mention anything about providing training or assistance to Ms.  
6 Brzycki on ways to improve her efficiency and time management. *See id.*; *see also* Fix Decl.  
7 Ex. N.  
8

9  
10 There is also no dispute that an accommodation that provided a lighter patient load for  
11 Ms. Brzycki was possible. According to Ms. Roland’s email to Ms. Petritz, the six July 11  
12 patients had already been scheduled to see the inpatient ARNPs before Ms. Brzycki returned to  
13 work. Fix Decl. Ex. P at UWMB005327. The inpatient ARNPs had covered Ms. Brzycki’s  
14 clinic shifts during Ms. Brzycki’s April through July medical leave, and they covered those  
15 shifts after Ms. Brzycki returned to medical leave on July 12. Although Defendants claim it  
16 was a “struggle” to cover the follow-up visits while Ms. Brzycki was on medical leave, the  
17 patients were still being seen. Fix Decl. Ex. U (Tirschwell Dep.) at 69:5-23. The only  
18 reasonable inference to draw from this evidence is that Defendants could have reduced Ms.  
19 Brzycki’s patient load on Tuesdays to three or four, consistent with her request, and continued  
20 to have the inpatient ARNPs see the remainder of the patients.  
21

22  
23 Finally, Defendants cannot rely on an undue hardship defense to avoid liability for their  
24 failure to accommodate Ms. Brzycki in June and July 2017. Defendants expressly withdrew  
25 their previously-asserted undue hardship affirmative defense in their answers to Plaintiff’s  
26 Second Interrogatories. Fix Decl. Ex. T at Interrogatory No. 15.  
27

28 In light of the foregoing, there can be no genuine dispute of fact that Defendants failed

1 to reasonably accommodate Ms. Brzycki's disability in June and July 2017. The Court should,  
2 therefore, grant Ms. Brzycki's motion for partial summary judgment on this claim.

3  
4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court should grant Ms. Brzycki's motion for partial  
6 summary judgment and hold, as a matter of law, that Defendants failed to accommodate Ms.  
7 Brzycki's disability in June and July 2017.

8  
9  
10 DATED this 27<sup>th</sup> day of November, 2019.

11  
12 FRANK FREED SUBIT & THOMAS LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel/parties of record. I hereby certify that no other parties are to receive notice.

DATED at Seattle, Washington on this 27<sup>th</sup> day of November, 2019.

/s/Sarah Gunderson

Sarah Gunderson